

STATE BOARD OF ELECTIONS
Regular Meeting
Tuesday, December 18, 2012

MINUTES

PRESENT: William M. McGuffage, Chairman
Jesse R. Smart, Vice Chairman
Harold D. Byers, Member
Betty J. Coffrin, Member
Ernest L. Gowen, Member
Judith C. Rice, Member
Bryan A. Schneider, Member
Charles W. Scholz, Member

ALSO PRESENT: Rupert Borgsmiller, Executive Director
James Tenuto, Assistant Executive Director
Steve Sandvoss, General Counsel
Amy Calvin, Administrative Assistant II

The meeting convened at 10:30 a.m. with all Members present in Chicago. The meeting was also connected via videoconference with the Springfield office.

The Chairman opened the meeting by leading everyone in the pledge of allegiance.

A moment of silence was observed in memory of the victims of the shooting in Newtown, Connecticut.

Member Scholz moved to approve the minutes of November 19 and December 2 meetings as presented. Member Coffrin seconded the motion which passed unanimously.

The Chairman presented a resolution in honor of the late Robert Zawicki who was the Assistant Executive Director of the Chicago Board of Election Commissioners. He noted that Mr. Zawicki was an invaluable resource in the field of running elections, voter registration, polling place logistics, etc. and was well respected and will be missed. The Chairman read the resolution into the record and then presented it to Lance Gough, the Executive Director of the Chicago Board of Election Commissioners. Mr. Gough thanked the Board and said he would deliver the resolution to Mr. Zawicki's family.

The Chairman moved to Agenda item 4.a, a report on the Special Election in the 2nd Congressional District and asked the General Counsel to give an update. He reported that a special election is necessary due to the resignation of Jesse Jackson, Jr. Public Act 97-1134 was passed which authorized the special election to take place April 9th so that both the primary and the special elections would be held in conjunction with consolidated elections scheduled in the spring of 2013. The General Assembly authorized the SBE, in conjunction with the election authorities, to prepare an election calendar included on pages 130-154 of the Board meeting packet. All four affected jurisdictions came to an agreement as to the petition filing and objection dates and it was noted that January 8, 2013 was chosen to certify the ballot to comply with the requirement that absentee ballots be available for transmittal not later than 45 days prior to the election. That 45th day falls on January 12. The General Counsel reviewed the independent and new party petition filing dates and noted that the date of the primary is February 26, however, the 45 days preceding the date of the special election is February 23, which would require, under normal circumstances, that the ballots be available for transmittal. This will be impossible because results of the primary will not be known

until at least February 26 and the proclamation of results of the primary election is March 12. In anticipation of concerns from the Justice Department, staff plans to request a waiver from the Federal Voting Assistance Program which is a procedure provided for in the MOVE Act where if you establish that the state faces an undue hardship that a waiver can be granted excusing the state from strict compliance with the 45-day deadline to transmit the ballots. We also are going to provide for the faxing and mailing of the ballot through Express Mail and the electronic transmission of the ballot as well. The ballot would be both transmitted to the voter and then, upon completion of voting, returned by the voter to the election authority. The General Counsel indicated that a motion to approve the election calendar and request a waiver would be appropriate at this time. Vice Chairman Smart moved to adopt the election calendar contained on pages 130-154 of the Board meeting packet and authorize staff to submit the waiver request. Member Scholz seconded the motion which passed by roll call vote of 8-0.

The Executive Director noted that a special meeting would need to be held on January 8 to certify the ballot. In the alternative, the Board could authorize staff to certify the ballot without holding a special meeting. He also said a special meeting would need to be scheduled for the SBE to meet as the SOEB and recommended January 18th to call cases and accept appearances for any objections filed in conjunction with the Special Election in the 2nd Congressional District. The regular monthly meeting would be held on January 22. Chairman McGuffage moved to delegate authority to staff to certify the ballot on January 8, 2013. Member Coffrin seconded the motion which passed by roll call vote of 8-0.

The General Counsel presented Agenda item 3.a.1, a request for settlement offer from *SBE v. Citizens for Spitz*, 18183 and reviewed the matter. He recommended to accept the settlement offer as long as it is 50% of the original penalty and to be paid within 30 days of the order. No one was present on behalf of the committee. Vice Chairman Smart moved to accept the recommendation of the General Counsel. Member Coffrin seconded the motion which passed by roll call vote of 8-0.

The General Counsel presented Agenda item 3.a.2, a request for settlement offer from *SBE v. Citizens for Waguespack*, 19898 and reviewed the matter. He recommended to accept the settlement offer to be paid within 30 days of the order. No one was present on behalf of the committee. Vice Chairman Smart moved to accept the recommendation of the General Counsel. Member Rice seconded the motion which passed by roll call vote of 8-0.

It was agreed to skip to Agenda item 4.c., late precinct reporting update to accommodate the staff present from the Chicago Board of Elections. Dianne Felts reported that all jurisdictions responded to a survey regarding their precincts reporting in after 2:00 a.m. the morning after the General Election. Only two jurisdictions, the Chicago Board of Election Commissioners and the Danville Board of Election Commissioners had precincts reporting after 2:00 a.m. due to judges errors. Mr. Gough said that 31 precincts reported late due to the judges errors and instead of counting them that day they set up a canvassing board and notified the candidates of such and invited them to be present during the re-counting of the ballots.

The General Counsel presented carryover appeals of campaign disclosure fines for Agenda item 3.a.3., *SBE v. Friends of Derrick Smith*, 22275, 12AM026 and reviewed the matter. Camela Wimberly was present on behalf of the respondent committee and said the former treasurer will not respond to any calls and e-mails to discuss the nature of the late filings and asked the Board to issue a subpoena for her testimony. The General Counsel indicated that the Board does not issue subpoenas in these types of matters but said it could exercise discretion and reduce the penalty. Ms. Wimberly offered a settlement of \$7,500 which was 25% of the penalty. Vice Chairman Smart moved to accept the settlement offer and Member Gowen seconded the motion. After discussion, it

was agreed to allow Ms. Wimberly to contact Mr. Smith and return to this matter later in the meeting. No action was taken on the motion.

The General Counsel presented a carryover appeal of campaign disclosure fines for Agenda item 3.a.4, *SBE v. Stipend, 1118*, 12MA078 and recommended the appeal be granted based on the explanation as to the transfer of funds described in Joel D'Alba's letter contained on pages 28-30 of the Board packet. Member Scholz moved to accept the recommendation of the General Counsel. Member Rice seconded the motion which passed by roll call vote of 8-0.

The General Counsel noted that Agenda item 3.a.5 was pulled and will be placed on a future Board Meeting Agenda.

The General Counsel presented the following appeals of campaign disclosure fines where the hearing officer recommended the appeals be granted for Agenda items 3.a.6-9:

- 6) *SBE v. Committee to Elect McMillan, 17202*, 12JQ048;
- 7) *SBE v. Friends for Lawson, 18257*, 12AJ030;
- 8) *SBE v. Batavia PAC for Education, 20897*, 12MQ293;
- 9) *SBE v. Citizens for Tate and Cantelo-Zylman, 23436*, 12JQ114.

The General Counsel concurred with the recommendation of the hearing officer and noted that for Agenda item 3.a.6, he also recommended the supplemental recommendation to vacate the previous Board order and have that fine be incorporated into the final recommendation to grant the appeal based on the committee having filed a final report earlier than these reports that the committee had been assessed penalties for. Vice Chairman Smart moved to accept the recommendation of the General Counsel in the above named appeals. Member Byers seconded the motion which passed by roll call vote of 8-0.

The Board returned to Agenda item 3.a.1 because Kenneth Spitz was now present. He asked the Board for more than a 50% reduction in the penalty due to computer issues and extreme difficulties in receiving mail during his divorce proceedings. The General Counsel recommended, due to extenuating circumstances, to treat the matter as a motion for reconsideration and remand the matter to the hearing officer to allow Mr. Spitz a chance to appeal the fines. Chairman McGuffage moved to accept the recommendation of the General Counsel and send the matter to a hearing officer for disposition. Vice Chairman Smart seconded the motion which passed by roll call vote of 8-0.

The General Counsel presented Agenda item 3.a.10, *SBE v. Cook County Democratic Party, 163*, 12AM002 and summarized the matter. He concurred with the hearing officer recommendation to deny the appeal. Mike Kasper was present on behalf of the committee and explained that it was the committee's intention to timely file the A-1, however, the person responsible for this became gravely ill and upon her return, filed the A-1 immediately after realizing it was not done in her absence. Mr. Kasper noted that a supporting affidavit was included and asked the Board to treat this as a first violation and stay the fine for two years. He also said that it was filed well in advance of the primary election so there was a proper disclosure attempt. The General Counsel noted that it was in the Board's discretion to take that approach. Member Scholz moved to deny the appeal and stay the penalty for a period of two years unless a subsequent violation occurs. Member Rice seconded the motion which passed by roll call vote of 8-0.

The General Counsel presented the following appeals of campaign disclosure fines where he concurred with the hearing officer recommendation to deny the appeals for Agenda items 3.a.11-14:

- 11) *SBE v. PAC of the Structural Engineers Association of IL (SEA PAC)*, 4943, 12AJ018;
- 12) *SBE v. Family PAC*, 8185, 10AG095;
- 13) *SBE v. Dundee Township Democratic Central Committee*, 18097, 12MQ291;
- 14) *SBE v. Committee for a Better 7th Ward*, 19217, 07JS139.

No one was present on behalf of the respondent committees. Vice Chairman Smart moved to accept the recommendation of the General Counsel and hearing officer in the above named appeals. Member Scholz seconded the motion which passed by roll call vote of 8-0.

The General Counsel presented Agenda item 3.a.15, *SBE v. Alliance for Living PAC*, 20835, 12AJ041 and concurred with the hearing officer recommendation to deny the appeal. Gary Weintraub was present on behalf of the respondent committee and apologized for the violation. He indicated that it was their intent to dissolve the committee and offered a settlement of \$496. Vice Chairman Smart moved to deny the appeal, accept a settlement offer of \$496 to be paid within thirty days and dissolve the committee. Member Byers seconded the motion which passed by roll call vote of 8-0.

The General Counsel presented Agenda item 3.a.16, *SBE v. Change 4 Bensenville*, 21533, 12MA085 and concurred with the hearing officer recommendation to deny the appeal. Mr. Welch was present on behalf of the respondent committee and said he misunderstood SBE staff and thought the committee was closed. He then offered to close the committee and pay a settlement of \$1,600. Vice Chairman Smart moved to deny the appeal, accept the settlement offer of \$1,600 to be paid within 30 days and dissolve the committee. Member Gowen seconded the motion which passed by roll call vote of 8-0.

The Board returned to Agenda item 3.a.3, *SBE v. Friends of Derrick Smith*, 22275, 12AM026. Ms. Wimberly said she did not have the authority to make a settlement offer and the attorney for the committee would like to reschedule the matter. After discussion, Member Coffrin moved to deny the appeal. Member Gowen seconded the motion which passed by roll call vote of 8-0.

The General Counsel presented Agenda item 3.a.17, *Blum v. SCAN, et. al.*, 12CD121, which was a complaint following public hearing. No one was present for either party and the General Counsel concurred with hearing officer recommendation to dismiss the complaint. Vice Chairman Smart moved to accept the recommendation of the General Counsel and hearing officer. Chairman McGuffage seconded the motion which passed by roll call vote of 8-0.

A listing of payment of civil penalties was presented for informational purposes.

The Chairman moved to recess to executive session to consider a complaint following closed hearing. Member Byers seconded the motion which passed unanimously. The meeting recessed at 12:00 p.m. and reconvened at 12:35 p.m. Upon reconvening, a second roll call was taken with the same attendance noted in the initial roll call.

As to Agenda item 3.a.19, *Cicero Voters Alliance v. Citizens for Juan Ochoa*, 12CD134, Member Schneider moved with respect to the portion of the complaint directed at a piece of writing in the Spanish language to find that that complaint was not filed on justifiable grounds; and with respect to the portion of the complaint that was directed at a reprinted newspaper article, to find that it was filed on justifiable grounds, but that no public hearing is required, and that the committee be ordered to make appropriate disclosure on any future political communications, and that failure to do

so would subject the committee to a penalty for failing to comply with a Board order. Member Gowen seconded the motion which passed by roll call vote of 8-0.

The Executive Director turned to the legislative update and said that the Spring 2013 Legislative Agenda was included in the Board packet. Cris Cray reviewed the proposed legislation and noted that only two elections related bills passed last year and the remaining legislation will be carried over into this year. A mini elections clean-up bill will also be introduced containing small one word changes to various provisions. Discussion ensued regarding consolidation of polling places and voting centers and Ms. Cray said she would look into those items. Member Scholz moved to approve the 2013 Spring Legislative Agenda included on pages 146-147 of the Board packet. Member Coffrin seconded the motion which passed unanimously.

The Executive Director reported on the COGEL Conference that Sharon Steward and Tom Newman attended earlier in the month and noted that both of them were either panel leaders and/or discussion leaders. Mr. Borgsmiller added that staff has been attending the COGEL Conference since 1978 and continued presence at future conferences is important because of the information gained from the sessions. The 2013 COGEL Conference will be held in Quebec City in December.

Kyle Thomas gave an IVRS update and indicated that staff has been working with the election authorities to enter voter history and clean up the rolls. Work will also begin again assisting Pulaski County with their voter purge.

The Executive Director presented the SBE FY14 Appropriation Request and highlighted some of the line items in operations, grants and project lump sums. He noted that several of the requested amounts were decreased from the FY13 budget allocation and would prefer that the budget that is received will be in a lump sum format at least for the operations portion. Discussion ensued regarding election judge reimbursements and county clerk and recorder stipends. Mr. Borgsmiller felt this was a sound budget that addresses the needs of the Agency and thanked staff for their hard work. Vice Chairman Smart moved to approve the FY14 Appropriation Request. Member Scholz seconded the motion which passed by roll call vote of 8-0.

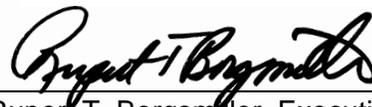
The fiscal status reports and two year plan of staff activity were presented for informational purposes.

With there being no further business before the Board, Vice Chairman Smart moved to adjourn until the Special Board Meeting on Friday, January 18, 2013 at 3:00 p.m. in Chicago and Springfield. The next regular meeting is scheduled for Tuesday, January 22, 2013 at 10:30 a.m. in Springfield. Member Scholz seconded the motion which passed unanimously. The meeting adjourned at 1:30 p.m.

Respectfully submitted,



Amy Calvin, Administrative Assistant II



Rupert T. Borgsmiller, Executive Director